IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IF OR IS NOT
APPROVED FOR REPORTING
[Chapter VIII, Rule 32(2) (b)]
Description of case

Appeal From Order No. 1572 of 2001 **Decided on: 29rd March, 2006**

A.F.R. (Approved for Reporting

Not Approved for Reporting

Date 29.03.2006

(Initials of Judge)

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTRANCHAL AT NAINITAL

Appeal From Order No. 1572 of 2001
(Old No. 443 of 1997)

Jagat Singh Rawat
S/o late Sri Ghepal Singh Rawat,
R/o Village Chaplori, P.O. Chaplori,
Tehri Pauri, Distt. Pauri Garhwal.

…….. Appellant

Versus

1. The Motor Accident Claims Tribunal /
   District Judge, Pauri Garhwal.
2. The Oriental Insurance Co. Ltd.
   Registered Office Oriental House
   1-25//25, Asif Ali Road, New Delhi
   Branch Pauri Garhwal,
   Through its Regional Manager,
   Region Haridwar.
3. Sri Bhag Singh Rawat
   S/o Sri Shyam Singh Rawat,
   R/o Hariyana, at present
   Residing at Bijli Board Patti
   Village Nising, District Karnal (Hariyana).

…….. Respondents

Mr. Anil Bisht, Advocate holding brief of
Mr. S.N. Babulkar, Sr. Advocate for the appellant.
Mr. Deepak Rawat, Advocate for respondent No. 2.
Mr. D.C.S. Rawat, Advocate for claimant-respondent No. 3.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 173 of the Motor Vehicles Act, 1988, is directed against the judgment and award dated 16.08.1997, passed by M.A.C.T. / District Judge, Pauri Garhwal in M.A.C. Case No. 03 of 1996, whereby the claim of the claimant was allowed for an amount of compensation to the tune of Rs. 1,25,000/- and the appellant, owner of the vehicle, has been directed to pay the same.

3) Brief facts of the case, are that on 01.12.1995 at about 1:30. P.M. Smt. Anita Devi was traveling in Jeep registration No. U.P. 07 –D / 491 from Village Paubo to Notha. Said vehicle was being driven rashly and negligently by respondent No. 1, Jagat Singh, who was owner as well as driver of the said vehicle, resultantly, the vehicle fell in a gorge and Anita Devi died in the accident. She was aged 27 years at the time of her death. Claimant No. 1, husband of the deceased and claimants Nos. 2, 3 and 4, minor children of the deceased filed claim petition alleging that the deceased was earning Rs. 1,000/- per month for her family. It is also alleged in the claim petition that the vehicle was ensured with respondent No. 2, Oriental Insurance Co. Ltd. A sum of Rs. 8,92,000/- was claimed by the claimants.

4) Respondent No. 1, owner and driver of the vehicle, filed his written statement admitting that the accident did take place but that was so due to some technical fault in the vehicle. He further pleaded, that the vehicle was ensured with the respondent Oriental Insurance Co. Ltd., at the time of the accident. Respondent Oriental Insurance Co., filed its separate written statement and contested the claim alleging that the conditions of the policy were violated by the owner of the vehicle. It was further pleaded in the written statement that the owner of the vehicle was not having valid driving licence and registration certificate of the vehicle at the time of the accident. It was also pleaded that passengers were in excess of the limit allowed to take in the vehicle.

5) The Tribunal framed following issues, during the trial:

1. *Whether. Smt. Anita Devi died in the accident?*
2. *Whether, correct age of Smt. Anita Devi is recorded in the claim petition?*
3. *Whether, Anita Devi was earning Rs. 1,000/- per month, as alleged in the claim petition?*
4. *Whether, the vehicle registration No. U.P. 07-D / 491 was being driven without valid papers, in Violation of the terms of the policy, as alleged by Respondent No. 2 in its written statement?*
5. *To, what amount of compensation the claimants are entitled and, if so, from whom?*

6) After recording the evidence and hearing the parties, the tribunal gave the findings that Smt. Anita Devi died in the accident while she was travelling in Jeep registration No. U.P. 07 –D / 491. It is also admitted fact between the parties, that appellant Jagat Singh was the owner and driver of the vehicle, at the time of the accident. As to the rash and negligent driving on the part of the driver of the vehicle in question, there is un-controverted evidence of P.W. 2, Virender Singh, an eyewitness. As such, it is also established on the record that the vehicle was being driven rashly and negligently by the appellant Jagat Singh. Neither owner and driver, Jagat Singh nor the Insurance Co. adduced any evidence before the tribunal against the aforesaid evidence of P.W. 2, Virender Singh, as such, this Court has no hesitation in holding that the accident had occurred due to the rash and negligent driving on the part of the driver of the vehicle in question.

7) As to the fact, that the claimant No. 1, Bhag Singh Rawat was husband of the deceased and Balwant Singh,

Sanjay Singh and Jai Singh were minor children of the deceased, pleas are not specifically denied in the written statements of the opposite parties, including the appellant. As such, statement of P.W. 1, Bhag Singh Rawat to this effect is rightly believed by the tribunal and they have been rightly held to be entitled to the amount of compensation for the loss they have suffered, As far as quantum of amount of compensation is concerned, the deceased was a housewife aged 27 years, and in such as case the notional income has to be assumed to assess the dependency and the loss suffered by the claimants. In the present facts and circumstances of the case, the amount of Rs. 1,25,000/- cannot be said to be unreasonable from any angle.

8) Leaned counsel for the appellant (owner of the vehicle) has argued that the owner has wrongly been held liable to make payment of the compensation as the vehicle was ensured with respondent Oriental Insurance Co. In reply to this, learned counsel for the respondent Insurance Co. argued that since the claimants as well as the owner failed to produce the insurance policy before the tribunal and photocopy of the policy was not admissible in evidence, as such, the tribunal has not committed any error of law in holding liability on the owner of the vehicle in question. This Court is unable to accept the submission advanced on behalf of the respondent Insurance Co, for the reason that in the written statement filed before the tribunal, the Insurance Co. has expressly admitted that the vehicle No.U.P.07-D/ 491 owned by Jagat Singh was ensured with it. It has been specifically stated in the written statement of Oriental Insurance Co. that para 15 to 17 of the claim petition are

admitted. In the circumstances, since the fact was admitted between the parties that the vehicle was ensured with respondent Oriental Insurance Co., neither the claimants nor the owner was required to file copy of the policy. Since it was the case of the Oriental Insurance Co. that the terms of the policy were violated it should have filed the copy of the policy to show that which of the term was violated by the owner of the vehicle. In these circumstances, this Court is of the view that the Tribunal has erred in law by not holding Insurance Co. liable to pay the amount of compensation awarded to the claimants on behalf of the owner. To that extent, since the tribunal has committed the error of law, the appeal deserves to be allowed.

9) Accordingly, the appeal filed by the owner of the vehicle is allowed. The impugned judgment and award dated 16.08.1997, passed in M.A.C. Case No. 03 of 1996 is modified to the extent that sum awarded by the tribunal in favour of the claimants shall be paid by the respondent Oriental Insurance Co. However, the interest awarded is reduced from 18% to 6%, if the amount of compensation is deposited within a month from today. If the amount is not deposited, within a month from today, the respondent Oriental Insurance Co. shall be liable to pay interest at the rate of 9% per annum on the awarded sum of Rs. 1,25,000/-. The amount if deposited by the appellant may be withdrawn by him.

(Prafulla C. Pant, J)

Dt. March 29,2006.
H.Negi